

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5359 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

JESHA BHANA BARVADIA

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Petitioner

MR DN PATEL, AGP, for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/01/99

ORAL JUDGEMENT

This petition under Art. 226 of the Constitution challenges order dated 15.5.1995 passed by Collector, Kachchh u/s 108(6) of the Bombay Land Revenue Code, 1879 (hereinafter referred to as the 'Code') by which the Collector ordered to set aside Entry Nos. 840 and 847 in the record of rights pertaining to the land in Village

Kalyanpar, Rahpar Taluka in Kachchh District.

2. When the petition reached hearing today, Mr. Mankad, learned counsel for the petitioner, submitted that the petitioner was the owner of the land in question by virtue of the registered sale deed under which he had purchased the land from heirs of Momaya Madeva, that is, Hari and Amba and that the said Momaya Madeva had purchased the land from Narsang Bhoja, who was the original owner of the land in question. Mr. Mankad further submitted that the petitioner had applied for N.A. permission on the strength of Mutation Entries Nos. 840 and 847 and once the entries were earlier certified on 13.12.1993 and 18.4.1994 respectively, the show-cause notice dated 29.12.94 issued by the Collector was vitiated by delay and, therefore, the final order was also vitiated.

3. Mr. D.N. Patel, learned AGP, appearing for the State of Gujarat has submitted that, against the impugned order of the Collector, a revision lies before the State Government u/s 211 of the Code. Mr. Patel has further submitted that, since the Collector has passed the impugned order on the basis that the Government is the owner of the land in question and not the petitioner, it is open to the petitioner to move the Collector u/s 37(2) of the Code also, as the Collector has been empowered to hold a formal inquiry and to pass an order deciding the claim about ownership of the land in question.

In rejoinder, Mr. Mankad, learned counsel for the petitioner, has submitted that Civil Suit No. 22/94 was filed by the petitioner against the third parties who were trying to dispossess the petitioner from the land in question. In the suit, those defendants had filed an application for joining the State as a defendant but that application was dismissed by the Civil Court by order dated 20.9.94.

4. After hearing the learned counsel for the parties, it appears to the Court that the present petition need not be entertained on the short ground that the petitioner has not one but several alternative efficacious remedies available to him and it would be open to the petitioner to choose such alternative remedy which he wants to avail of. On this short ground alone, this petition is not entertained and it is accordingly dismissed with liberty to the petitioner to avail of any other alternative remedy available to him under the law. In case the petitioner files an application for joining the State as party in the suit, the Civil Court shall

decide the same without being influenced by the previous order dated 20.9.1994.

5. Subject to the above observations, the petition is dismissed. Rule is discharged with no order as to costs. The ad-interim order passed earlier is vacated.

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